

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)
)
v.)
)
YAISDER HERRERA GARGALLO) Docket No. 2:16-cr-141-NT
JOSE CASTILLO FEBLES)
JUAN CARLOS FEBLES,)
)
Defendants.)

ORDER ON MOTION FOR APPROVAL OF SEARCH PROCEDURE

The Defendants have been charged in a six-count Superseding Indictment with access device fraud and identity theft charges. As part of a continuing investigation into the Defendants' alleged activities, the government obtained a search warrant for a Google Gmail account believed to be operated by Defendant Jose Castillo Febles ("the Defendant"). Google provided the government with the results of the search warrant on the evening of December 14, 2016. On December 15, 2016, government counsel began review of the emails produced in response to the search warrant. In the course of conducting this review, government counsel saw two emails that appeared to have been sent to the Defendant by a Florida attorney and were therefore presumptively privileged communications. At that point, government counsel ceased the preliminary review without opening either email.

The government has filed the instant motion requesting approval for a privilege filter process. The Defendant does not object to the government's proposed process. I **APPROVE** the following privilege filter process for screening the Defendant's Gmail account for privileged materials:

1. The government’s “filter agent,” who has not been, and who will not be, involved in the investigation or prosecution of this case, will review the materials received from Google under the search warrant. The agent will use the “header” information on the emails to filter out any emails purporting to be either to or from the attorney in Florida, without reviewing the content of those emails. The agent will review the content of the remaining emails to ensure that no privileged information may be contained within them. The agent shall maintain a log detailing the disposition of each email in question.
2. The government will assign a “filter AUSA” who has not been, and will not be, involved in the investigation or prosecution of this case, with whom the filter agent can discuss any issues that may arise and to whom the filter agent may forward emails that the filter agent has determined may contain arguably privileged information.
3. When the foregoing review is completed, the filter agent shall return all materials determined to be privileged to the Defendant’s counsel in this case and notify counsel whether any arguably privileged documents have been determined not to be privileged or to be subject to an exception to application of the privilege. With respect to those arguably privileged documents that the government has deemed not to be covered by the privilege or to be subject to an exception to the privilege, if any exist, the filter agent and/or filter AUSA shall supply the Defendant with a log describing any such document by date, sender, recipient, and subject matter, sufficient to enable the Defendant to

assess the government's determination. The Defendant may challenge any such determination by motion filed with the Court within 10 days of his receipt of said log.

4. Only those materials not filtered out, and not containing privileged or arguably privileged communications, will be sent to the case agent or the AUSA assigned to this case.

5. No arguably privileged materials shall be sent to the case agent or the AUSA assigned to this case unless and until (i) the Defendant fails to object, within 10 days of his receipt of the government's log, to the government's determination that the material in question is non-privileged or is subject to an exception to the privilege, or (ii) upon a timely objection by the Defendant, the Court rules that the material in question is non-privileged or is subject to an exception to the privilege.

6. The Court's approval of this proposed filter process does not foreclose the Defendant from filing a motion to suppress bearing on the materials in question. Government counsel provided a copy of this motion to counsel for the Defendant prior to its filing.

SO ORDERED.

/s/ Nancy Torresen
United States Chief District Judge

Dated this 3rd day of January, 2017.